

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SPRINT SPECTRUM L.P., SPRINTCOM,	:
INC. and SPRINT/UNITED	:
MANAGEMENT COMPANY,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
AT&T INC.,	:
	:
Defendant.	:
-----X	

Case No.

**DECLARATION OF BRYAN FRIES**

I, Bryan Fries, make this declaration under 28 U.S.C. § 1746 and state that:

1. I am Vice President of Marketing 5G Consumer Strategy and Global Services at Sprint/United Management Company. I make this declaration in support of Plaintiffs Sprint Spectrum L.P.'s, SprintCom, Inc.'s, and Sprint/United Management Company's (collectively "Sprint") motion brought by order to show cause for a temporary restraining order and a preliminary injunction against Defendant AT&T Inc. ("AT&T"). I have personal knowledge of the following facts and, if called upon as a witness, could and would competently testify thereto.

2. In my role as Vice President, 5G Marketing Strategy and Global Services, I lead the consumer segment planning for the launch of 5G service in 2019. I have developed a deep understanding of how consumers will use a 5G network, and am responsible for ensuring that Sprint has the network, devices, applications, processes, external partner relationships, and a comprehensive marketing plan in place to meet those needs. As a result, I am intimately involved in Sprint's efforts to build and offer to consumers a standards-based 5G network. My work involves both the technical aspects of those efforts, including Sprint's planned hardware

and software upgrades for 5G, as well as the business aspects of those efforts, including the marketing and promotional strategy associated with Sprint's 5G plans.

3. I have worked at Sprint for more than 20 years, during which time I have held various titles including Vice President in Marketing, Director of Corporate Development, and Director of Investor Relations. I have a Bachelor of Science degree in Business Administration and Finance from Truman State University.

### **The History of Sprint: Innovation and Customer Service**

4. Sprint and its predecessor and affiliated entities have been providing telecommunications services for over 120 years. During that time, it has prioritized innovation and consumer experience. To that end, Sprint has worked hard to develop, engineer, and deploy new technologies to continuously improve our service capabilities. Some of Sprint's marquee technological advancements include instant national and international push-to-talk capabilities and a global Tier 1 Internet backbone.

5. Sprint's legacy of innovation and service continues with an increased investment to improve quality across its network and a commitment to offer consumers a standards-based 5G wireless network, beginning in 2019.

6. Sprint's efforts have earned it awards and accolades, including from a variety of consumer and industry organizations. In 2017 Sprint Magic Box, a small cell device that improves indoor data coverage, was named "Small Cell Technology Innovation of the Year." Mobile Breakthrough has recognized Sprint with awards for outstanding mobile products in 2018. And the company's SpiderCloud small-cell solution for enterprises and public venues was honored as the winner of both the "Overall Wireless Broadband Solution" and "Next-Gen Wi-Fi Operator Deployment of the Year" awards.

7. As reported in the Third Quarter Earnings Results for Sprint's 2018 fiscal year, as of December 31, 2018, Sprint served 54.5 million connections to its wireless network.

### **The Wireless Industry**

8. In over two decades of work in the wireless industry, I have observed that the wireless market has become increasingly saturated with consumers. Today, about 95% of American consumers have cell phones and already subscribe to a wireless service. Most Americans get their mobile phone service from a Tier 1 service provider—Sprint, AT&T, Verizon, T-Mobile—or from a growing roster of cable operators and other companies that resell wireless service.

9. Because most consumers have already purchased wireless service, Sprint can only grow meaningfully by simultaneously keeping its current consumer base and, at the same time, adding subscribers from the pool of its competitors' consumers. Accordingly, Sprint directs its advertising both towards convincing its competitors' consumers to switch to Sprint and to Sprint's own customers, with the goal of making sure they continue to choose Sprint, as well as to the small segment of consumers who currently have no wireless service provider. I have observed that the same is true of Sprint's competitors, who both target Sprint's existing customers in their advertisements and direct their advertising to their existing customers to seek to ensure brand-loyalty.

10. The fact that the wireless market is saturated also means that small technological advancements, or even perceived advancements, can make a big difference in giving one competitor an edge over the other. Service providers compete aggressively to offer the latest wireless network technology. Historically, improvements in speed, reliability, and coverage—the key features of wireless service—have been the biggest drivers in market share growth. In

my experience, if consumers perceive one wireless provider to offer more contiguous, faster, or reliable service than the other, that belief can steer them to switch providers.

11. This is one of the many reasons why the advent and marketing of 5G is so important. As described below, the availability of a true, standards-based 5G wireless network will not only be an advancement for consumers—it will be the most noticeable and significant consumer experience improvement in the wireless industry for decades. My experience in the industry and third party research has confirmed that whichever wireless service providers first offer consumers the benefits of a legitimate 5G wireless network—by making it possible for them to connect a 5G-enabled phone to a true, standards-based wireless 5G network—will stand to reap the benefits of new customer growth and existing customer retention.

### **The 5G Experience**

12. 5G, or the “fifth generation” of networks, is the future of wireless service. The transition from 4G to 5G will be the most noticeable upgrade in wireless technology in nearly a decade.

13. The speed and reliability of 5G networks will surpass any prior generations of networks, bringing new levels of innovation and progress both for consumers and for a wide range of developing industries, like virtual reality technology, smart homes, and self-driving cars, among others. 5G networks will allow significantly faster streaming and downloading, especially of graphic-heavy audiovisual content, like movies, videos, and games.

14. For the moment, no consumers can enjoy the benefits of a wireless 5G network. There are no 5G-enabled mobile phones or tablets available for retail purchase or lease. Even if they were available, no contiguous 5G coverage is available to consumers because no service provider has finished upgrading enough of its cell towers with the necessary 5G radios to allow consumers to access this network as they move in and out of the zones of these various cell

towers—let alone across the country. And even if the cell towers were equipped with the requisite 5G hardware, no service provider has released the software necessary for the forthcoming 5G-enabled mobile devices (when they reach consumers) and the 5G cell towers (when they are eventually equipped with 5G radios) to communicate with each other, as is necessary for a network to function.

### **Sprint's 5G Rollout**

15. Even though these technological impediments currently stand in the way of the true, standards-based 5G, Sprint, like its competitors, is working to complete the necessary components of its own 5G network as soon as possible.

16. Sprint is preparing to offer a standards-based 5G wireless network in targeted major metropolitan areas, including New York City, in 2019. In preparation for this launch, Sprint has undertaken significant and costly 5G hardware upgrades to its 4G LTE network, including by installing hardware, like Massive MIMO antenna deployments and 5G radios, in its cell towers. Sprint has also spent considerable time and effort developing, in connection with third-party original equipment manufacturers, its 5G-enabled devices. It expects to offer its first 5G-enabled mobile phone in the first half of 2019, with a second phone expected soon thereafter. When these hardware upgrades are complete and its 5G-enabled devices are on the market, Sprint will only have to complete a simple software update to activate a 5G network in those areas where it has invested and deployed 5G-capable equipment, including New York.

17. These upgrades and efforts have been ongoing for several years and cost billions of dollars thus far, with additional costs to be incurred in the next few years. Sprint announced plans to spend about \$5 billion to \$6 billion per year between 2018 and 2020 on network capital improvements for its 5G service.

18. Sprint's 5G strategy has earned Sprint various industry awards. Sprint received a Leading Light Award from Light Reading for the "Most Innovative 5G Strategy," for the company's approach in using its 2.5 GHz spectrum and Massive MIMO 5G technology to deploy a 5G network. Sprint's innovative Massive MIMO solution was selected as "Commercial 5G Solution of the Year."

### **AT&T's Deceptive 5GE Claims**

19. A deceptive campaign like AT&T's 5GE advertising will have a significant negative impact on Sprint. AT&T's false claims impede Sprint's opportunity to reap the full commercial benefits of the 5G network launch that it has been developing for years at enormous expense. As Sprint is rolling out and promoting its 5G network, consumers will be deceived into believing that AT&T's "5GE" network is already a 5G network. Accordingly, consumers who may have switched to Sprint may remain with or switch to AT&T based on this false premise. AT&T's false and misleading "5GE" claims also harm consumer perception of Sprint's 5G technological innovations in the marketplace.

20. In addition, AT&T's false advertising of its 4G LTE Advanced network as "5GE" (or "5G E" or "5G Evolution") threatens to irrevocably alter consumers' perception of what a true, standards-based 5G (and its superior performance) looks like, and which of the carriers is offering such service at what time.

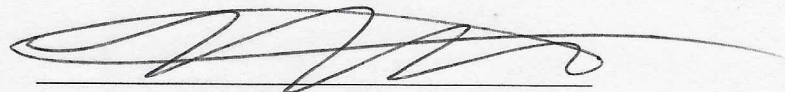
21. I am also aware that AT&T has pushed a software update to consumers to change the icon on some of its customers' mobile devices to read "5G E" instead of "LTE" when those devices are connected to AT&T's 4G LTE Advanced network. The harm caused by this deception has become even more immediate in the past few days, when AT&T announced that AT&T's "5G E" phone icon will begin to appear on Apple iPhones, which is the most prevalent device in the marketplace, reaching several million consumers. From a marketing standpoint,

this deception is particularly damaging because I have observed that consumers inherently trust Apple, and Apple products such as iPhones, and thus are even more likely to believe falsely that they are connected to a 5G network when they see the “5G<sub>E</sub>” icon.

22. Notably, any references to 5GE, 5G E, or 5G Evolution on AT&T’s website and other internet advertisements can be changed with minimal expense and effort.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Overland Park, Kansas  
February 6, 2019

A handwritten signature in black ink, appearing to read 'Bryan Fries', is written over a horizontal line.

Bryan Fries